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09/727,134	11/30/2000	Norbert Wolters	08874-US	2924
30689	7590	08/29/2007		
DEERE & COMPANY ONE JOHN DEERE PLACE MOLINE, IL 61265			EXAMINER KOVACS, ARPAD F	
			ART UNIT 3671	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

**MAILED**

Application Number: 09/727,134  
Filing Date: December 13, 2000  
Appellant(s): JAMES, BRENT

AUG 29 2007

**GROUP 3600**

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Max W. Garwood  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 5/10/2007 appealing from the Office action  
mailed 6/20/2006.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

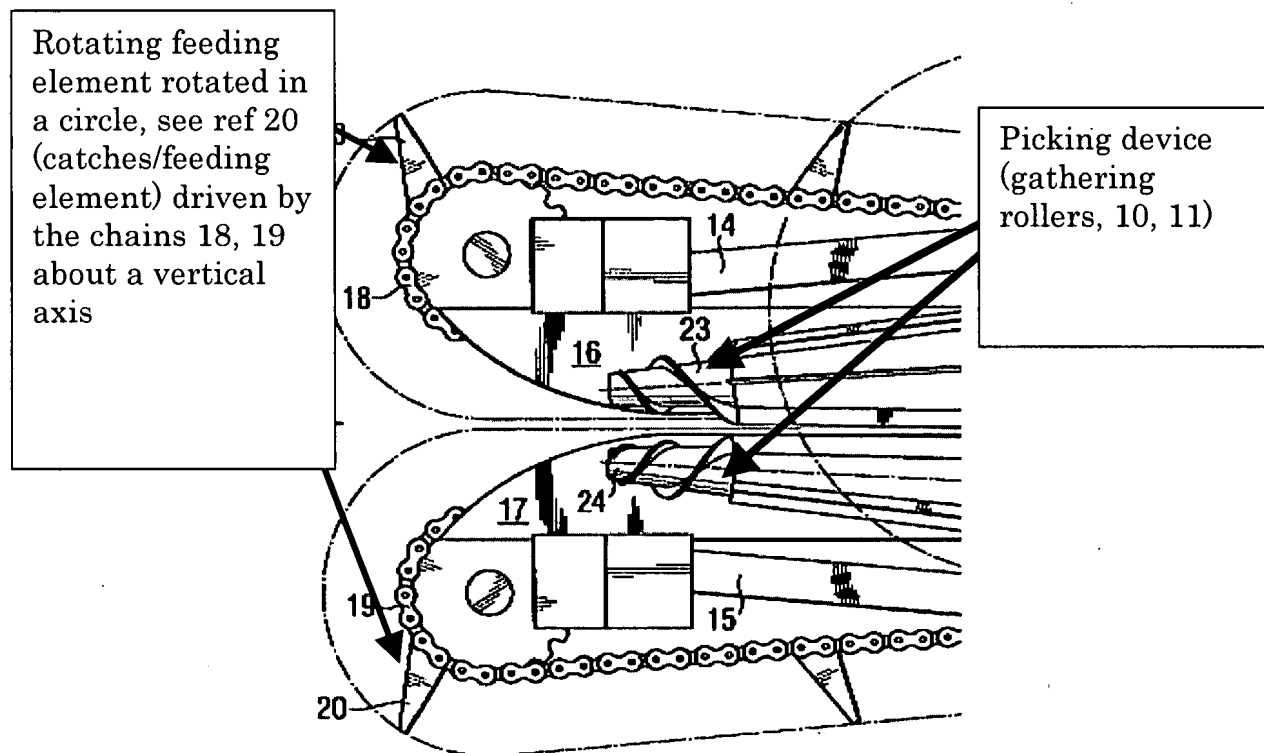
WO 99/03323	WIGERT	1-1999
2777267	THOMPSON	12-1953
GB 2012154	POTTINGER ET AL	7-1979

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-7, 20-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiegert (PCT WO 99/03323), in view of Thompson (2777267) and Pottinger et al (GB 2012154).

Wiegert discloses and for added convenience as shown in the marked up drawing:



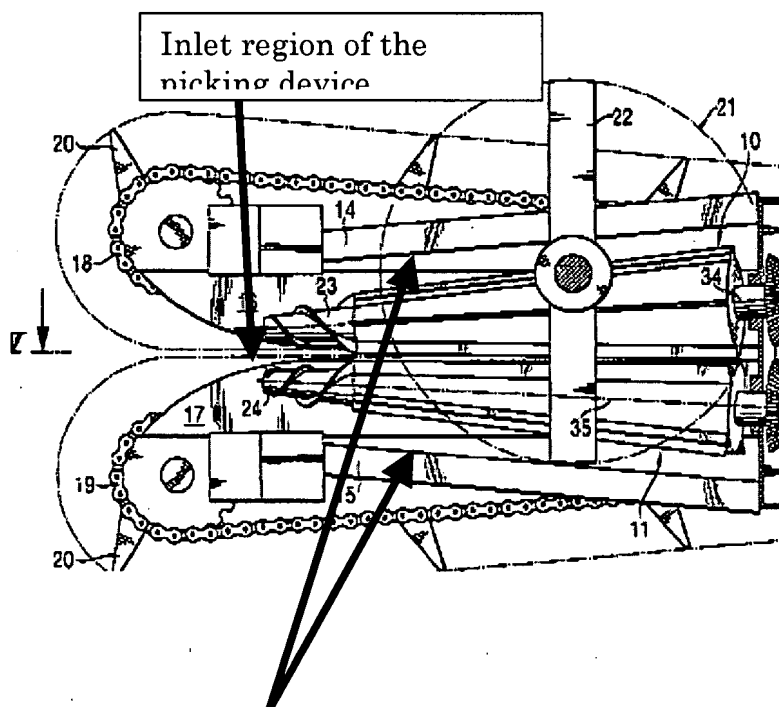
In re independent claims 1, 2, 20:

a feeding and picking device for feeding and picking a standing crop's individual plant stalks, the device comprising:

a rotating feeding element rotated about a vertical axis in a circle comprising a body with outwardly extending fingers (fig 4, ref 20; please see fig above);

a picking/gathering device (figs 4, 6, refs 10, 11; please see fig above) which separate useable parts from stalks;

an inlet is located in front of the vertical axis (see fig 4; please see fig below):



Area, at midpoint between the two ends, where the vertical axis about which the rotating feeding element (attached to the chains 18, 19) is rotated

Art Unit: 3671

claim 3:

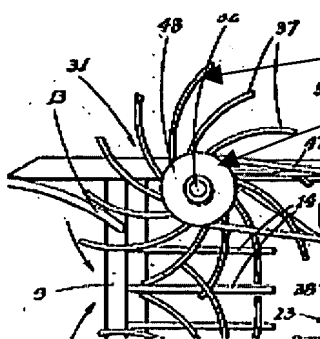
a snapping channel/gathering gap (31) wherein the feeding device covers the snapping channel (as shown on fig 4, the feeding device covers the channel);

two stalk rolls (ref 10, 11).

Although drawing-in/feeding/conveying element is well known to be interchangeable by any known drawing-in/feeding/conveying element, Wiegert is silent as to what other such element or mechanisms can be alternatively used for the same purpose.

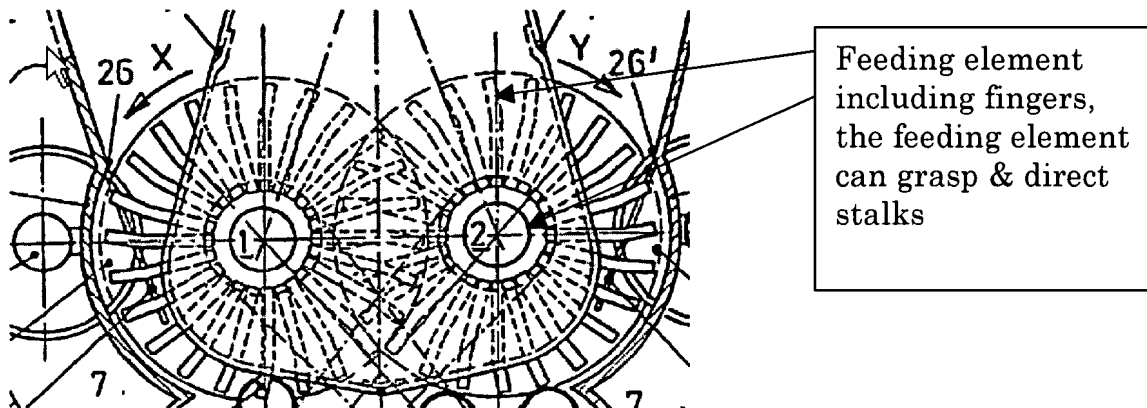
Both Pottinger and/or Thompson disclose known devices for conveying the stalk.

Thompson shows that the feeding device with fingers (fig 1-2, ref 31; see fig. below), wherein the fingers of the upper element (for example, ref 37) are directed away from a direction of rotation (as shown on fig 1) and the lower feeding element is beneath the upper feeding element and rotate the same direction as the upper one (fig 2, 3).



Feeding element including fingers, the feeding element can grasp & direct stalks

Similarly Pottinger shows on fig 2 and 4 (see fig below), the same arrangement wherein the upper feeding element (bent tines ref. 10 or feeding element(s) are shown, also see page 3, ln 114-115) are directed away from the direction of the feeding element; and the lower feeding element is beneath the upper feeding element and rotate the same direction as the upper one (fig 1).



It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the feeding device of Wiegert with the alternative feeding element taught by either Pottinger and/or Thompson, in order to improve the lifting actions and the support on stalks which may have leaned forwardly.

**(10) Response to Argument**

Appellant argues that there is no teaching to combine the Thompson and Pottinger references with the Wiegert reference. Examiner provided reasons why one skilled in the art may swap one feeding/drawing-in/conveying element for another, such with the mechanism(s) Thompson and/or Pottinger teach(es). It is further noted that analysis need not seek out precise teachings, but can take account of interferences and creative steps that a person of ordinary skill in the art would employ. A person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense.

Following a review of the official translation, appellant's argument regarding the translation & further teaching by Wiegert is well taken. The "substituted by any other known device" has been removed from the above rejection. The Examiner only maintains the reasons already presented in the rejection, and that is:

"It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the feeding device of Wiegert with the alternative feeding element taught by either Pottinger and/or Thompson, in order to improve the lifting actions and the support on stalks which may have leaned forwardly."

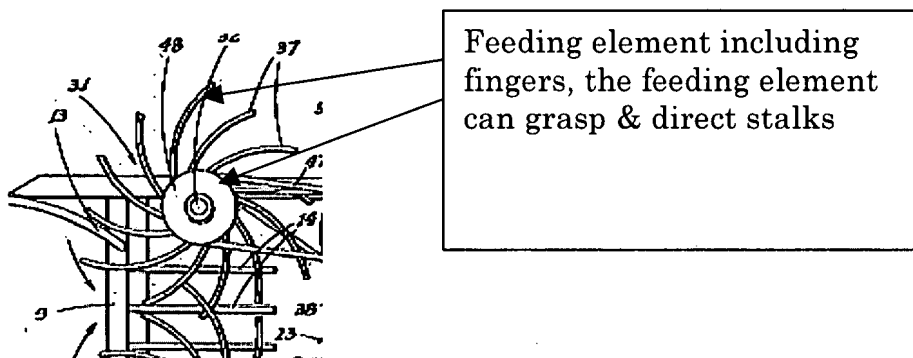
Appellant argued that it is impermissible hindsight to combine Pottinger or Thompson with Wiegert, since there is no teaching for the improvement gained and addressed by the Examiner. Examiner points out that recent court decision further



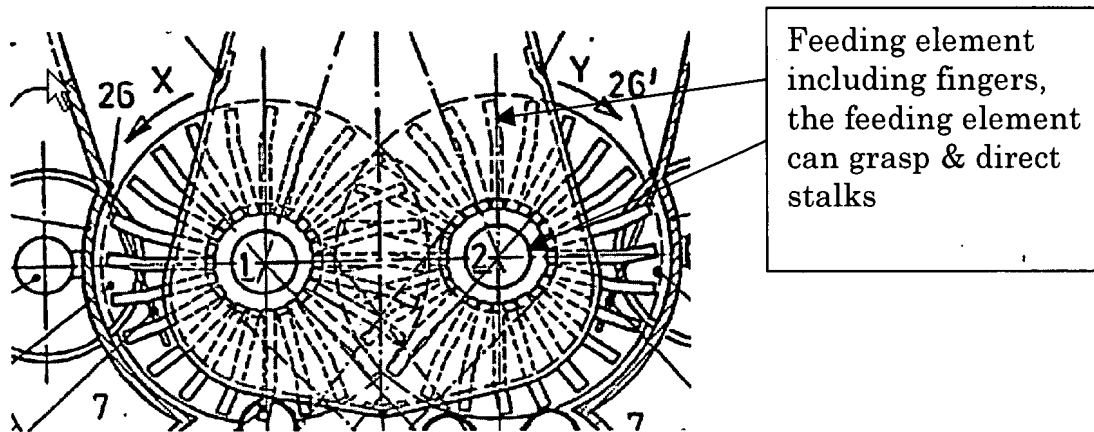
underlined that analysis need not seek out precise teachings, but can take account of interferences and creative steps that a person of ordinary skill in the art would employ.

Appellant argued Wiegert's feeding element is not "rotated in a circle about a vertical axis" and comprises "a body with outwardly extending fingers. The catches/fingers ref 20 constitute the fingers claimed, while the chain carrying the fingers/catches travels around a vertical axis, which axis is taken at the mid point between the two extreme ends of the chain. ." It is first noted that the same feeding element is being substituted by the alternatives taught by Pottinger or Thompson. The combination references teach the claimed feature as outlined above.

Appellant's argued that neither prior art teach a feeding element as claimed. The exact language of claim 1, lines 5-6, is: "feed element grasps plant stalks and directs the plants stalks to the picking device." However, Thompson (as shown below) teaches an alternative feeding element to be used in place of the Wiegert's feeding element to grasp plant stalks and to direct the stalks to the picking device:



Similarly, Pottinger (as shown below) teaches an alternative feeding element to be used in place of the Wiegert's feeding element to grasp plant stalks and to direct the stalks to the picking device:



it is noted that the combination of references teach the claimed feature.

Thompson's and/or Pottinger's feeding element would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute Wiegert's feeding element, in order to improve the lifting actions and the support on stalks which may have leaned forwardly.

Appellant argued that the vertical axis of the feeding element is not located in front of the vertical axis. However, the vertical axis of the combination's feeding element is where the chain (18, 19) mid point is located. That is the inlet of the picking device is located in front of the vertical axis of the feeding element, as claimed (see claim 1, last two lines).

In summary, appellant's arguments appear to disregard the teaching of combining Pottinger and/or Thompson with Wiegert, that is to substitute the feeding element of Wiegert with the feeding element of Thompson and/or Pottinger; therefore, the combination references teach the use of the feeding element claimed.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


/Arpad F Kovacs/

Arpad F Kovacs

Conferees:

Thomas B. Will 

TBW

Meredith C. Petravick 

MCP